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The Long Read: Straw man arguments and the removal of Article 370

Editor (https://theasiadialogue.com/author/adialogue_admin/) September 27, 2019 (https://theasiadialogue.com/2019/09/27/)

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Written by Ather Zia (https://www.colorado.edu/cas/ather-zia).

The Indian government, headed by the right-wing Hindu Bharatiya Janata Party (BJP), revoked the autonomous status of Indian-administered Kashmir on 5 August 2019 with scant regard for constitutional norms. The region was also bifurcated and demoted to Union Territory status, which is unprecedented in India's history.

All this was done without consulting the Kashmiri legislature, which is currently dissolved, or the region's people (https://www.nytimes.com/2019/08/09/world/asia/kashmir-photos-india.html). The state was put under complete lockdown, and it is now already more than a month since all forms of communication, including cell phones and the internet, were suspended. A strict curfew has been imposed and freedom of movement (https://www.amnesty.org.uk/press-releases/india-let-kashmir-speak-campaign-launched-month-lockdown) is restricted. The siege is fast turning into a humanitarian crisis (https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(19)31939-7/fulltext).

Kashmiris see the revocation of Kashmir's special status as an attack on their ethnic, religious and national identity, but the Indian government (somewhat patronisingly) is trying to make out that it is for their own good, with Indian Home Minister Amit Shah claiming

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(https://www.indiatoday.in/india/story/amit-shah-rajya-sabha-article-370-1577516-2019-08-05) that the special status had only 'damaged' Kashmir.

It is well-documented that across India the BJP runs on an anti-minorities agenda, and that the erasure of Kashmir's autonomy and dilution of its Muslim majority by way of settler colonialism has long been one of the BJP's rallying cries. It is no secret either that the 'final integration' of Kashmir with India has hyper-religious and nationalistic roots entrenched in Hindutva (https://www.telegraphindia.com/india/hindutva-is-not-the-same-as-hinduism-said-savarkar/cid/1699550), a Hindu supremacist (https://www.hurstpublishers.com/book/majoritarian-state/) ideology.

The Indian government is trying to justify its action with a number of straw man fallacies, claiming that Kashmir's autonomous status has only impeded the region's development and that the aim is simply to implement a corruption-free form of governance along with a host of fundamental rights such as the right to education, a minimum wage, a minority act and social reservation. Despite being replete with positive buzzwords, this is misleading and disingenuous and the political equivalent of gaslighting (https://en.wikipedia.org/wiki/Gaslighting).

While not wishing to defend the pro-India Kashmiri client politicians who upheld the farce of democracy under military occupation for the last 72 years, the human development indicators in Kashmir are nonetheless particularly strong (https://frontline.thehindu.com/cover-story/article29054385.ece). This is mostly the result of progressive policies and constitutional protections laid down in the 1950s. It is more than likely that even without raising the bogey of Kashmir's development, the BJP always planned to remove the region's special status. This is in line with the policies of India's secular parties too, such as the Indian National Congress (INC), which set in motion plans to eviscerate Kashmir's autonomy several decades ago, albeit in a less brazen manner.

In 1947, under the terms of the disputed treaty of accession to the Indian Union, Kashmir was to be a quasi-independent territory with its own constitution and flag. According to Article 370 of the Indian Constitution, India would have a say in matters of defence, the currency, communications and foreign affairs, but always with the approval of the Kashmiri legislature. However, from the very start, India engineered for clientelist regimes to govern Kashmir, which helped New Delhi first in disputing the nature of Kashmir's autonomy and then in eroding it through administrative, military and judicial means.

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Hence it was the case that by August 2019 only a few symbolic parts of the original treaty still remained in force. Nonetheless, the most important of these – Article 35A (https://theprint.in/opinion/with-special-status-hollowed-out-jk-considers-article-35a-last-vestige-of-real-autonomy/269547/), which promised territorial sovereignty for the region – was still functional in all three provinces: the Muslim-dominated Kashmir Valley, Hindu-dominated Jammu, and Ladakh, which has slightly more Muslims than Buddhists. Article 35A reserved the right to employment, education, property ownership and electoral franchise for the indigenous population.

It seems ironic that the Indian government keeps silent about its own poor record with regard to its minorities while claiming that autonomy in Kashmir has led to discriminatory practices there. The Valmikis – Hindus who belong to the repressed Dalit caste – are given as an example. In the 1950s, when municipal workers were on strike, the Kashmiri government brought in 200 Valmiki families from Punjab to work as *safai karamcharis* (street sweepers). Later, the rules were relaxed so these Valmikis could be employed by the government and given residential land. They retained their rights as Indian citizens but were not given the status of permanent residents in Kashmir.

Consequently, today the younger generation of Valmikis in Kashmir are educated but have no access to local political or professional opportunities (https://www.financialexpress.com/opinion/a-win-for-democracy-the-jammu-and-kashmir-reorganisation-bill-2019-portends-a-future-hope/1669470/). And although Kashmir passed the Manual Scavenging Prohibition Act in 2010, its implementation has been slow. Other laws which safeguard the Scheduled Castes and Scheduled Tribes in the region have also been passed. Nonetheless, because of historical disputes around demography, the Valmikis are at a disadvantage.

Another minority that the BJP exemplifies as being suppressed in Kashmir is the 4,000 families who migrated from West Pakistan in 1947. They established communities on the frontiers of Jammu province and received Indian citizenship and the right to vote in parliamentary elections. Even though successive Kashmiri governments have tried to ameliorate their situation through various means, these families are not considered permanent residents of Kashmir.

By promoting these cases as an assault upon minority rights generated solely by the policies of Kashmir's autonomous constitution, the BJP has weaponised the genuinely dire situation of the Valmikis and West

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Pakistani refugees. And yet the BJP government did not hesitate to repeal a pro-minority act in India that allowed the transfer of state land ownership to its inhabitants for a fixed fee. These inhabitants often belonged to the indigenous community of Gujjars and Bakerwals, a pastoral nomadic community who are predominantly Muslim and live between the provinces of Kashmir and Jammu.

The last decade had seen increasing strife between the Muslim Gujjars and Bakerwals and the local Hindus in Jammu. This came to a head in 2018 when an eight-year-old Gujjar and Bakerwal girl was gang-raped and murdered (https://www.bbc.com/news/world-asia-india-43722714). All of the accused are from the Hindu community, who came out in favour of the perpetrators, and the BJP openly supported them. The brutal gang rape and murder of a young child brought the war of demography out into the open, adding to the fears of Muslims in the region and bringing back memories of the massacre of Muslims of Jammu in 1947 (https://www.hindustantimes.com/columns/we-cannot-be-selective-about-the-past-in-j-k/story-ELfaDpC6UoAfMbBNQTgIsO.html). The Hindu right-wing extremists did not even allow the dead child's body to be buried in the village, and now the pastoral community fears to return to its usual grazing grounds.

The BJP's propaganda also contends that the removal of Kashmir's autonomy enables implementation of the Right to Information (RTI) Act (https://rtionline.gov.in/). Once again this is misleading because Kashmir already has its own RTI law, which regional activists consider to be more progressive than India's. Education is likewise cited as a reason for removing autonomy, so as to allow the implementation of the right to education in Kashmir. And yet not only do the figures show a steady upward trend in literacy rates in Kashmir, but the territory already has its own Right to Education Act, which mandates free education up to university level (whereas India's law only guarantees education from 6 to 14 years).

The other much-hyped straw man fallacy perpetuated by the BJP in support of the removal of autonomy is the alleviation of gender discrimination in Kashmir. This is mainly in relation to Kashmiri women who marry non-Kashmiris and purportedly lose their right to property and the franchise. Once more, this is misleading at best. True, there had been a bureaucratic decree in place since the 1960s – without any basis in law – which had been introduced by the then Revenue Ministry and did not allow Kashmiri women who married non-residents to renew their residency status. However, in 2002 the state's High Court made it

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clear that Kashmiri women who married non-Kashmiris did not lose (https://www.business-standard.com/article/pti-stories/j-k-women-marrying-non-natives-don-t-lose-residency-rights-expert-119012201079_1.html) their right to permanent residency.

While the rights of such women were now clear, the rights of their heirs were not specified and needed to be adjudicated on a case-by-case basis. Nonetheless, a committee had already been appointed to devise a lasting solution for this, although the new policy had not yet been finalised due to the interminable slowness of bureaucratic red tape.

These disingenuous arguments used by New Delhi to justify the BJP government's action in removing Kashmir's autonomous status through the abrogation of Article 370 are as much portentous of Kashmir's political tragedy as they are of the loss of conscience and soul of the Indian nation. And it should be added that the wider population in India seems to be complicit in proliferating the claims of the government and media.

Following the removal of Kashmir's autonomy, there were many public celebrations by India's politicians and citizens but with scant regard for the views of the Kashmiris or the fact that they were being held under siege. Everyone seemed happy to glorify India's victory over Kashmir. Social media became full of misogynistic songs and threats against Kashmiri women that brazenly celebrated the removal of autonomy as a victorious event in which women were seen as the spoils of war to be sexually harassed, kidnapped, or forcibly married.

If the BJP government's Kashmir policy is one of promoting people's rights and development, then how can it justify the chronic loss of basic civil liberties experienced by Kashmiris of all genders, especially over the last 33 years? Ever since the popular armed revolt against India, Kashmiris have lived under a *de facto* military occupation authorised through the Armed Forces Special Powers Act (AFSPA) (https://www.thehindu.com/news/national/what-is-afspa-and-where-is-it-in-force/article23648102.ece).

This act gives the Indian military all-encompassing control over the region and the lives of Kashmiris. In one of the most densely militarised zones on earth, more than 70,000 Kashmiris, both combatants and non-combatants, have been killed by the actions of India's armed forces, and more than 10,000 have been forcibly disappeared. The Indian forces have used rape as a weapon of war, and most reported cases (https://jkccs.files.wordpress.com/2017/05/alleged-perpetrators.pdf)

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have gone unpunished. Mass incarcerations, including child detainees, (https://www.businessinsider.com/kashmir-forces-detaining-kids-molesting-girls-amid-blackout-report-2019-8) have become the norm, and thousands have been maimed. What is considered to be the world's first mass blinding (https://www.theguardian.com/world/2016/nov/08/india-crackdown-in-kashmir-is-this-worlds-first-mass-blinding) occurred in Kashmir.

How can a government whose human rights record across India already includes violence against religious and gender minorities get away with annexing Kashmir in the full glare of the global community and call it integration? How can a government manage to demote an international dispute such as Kashmir to the status of a 'law and order situation', casually locking down the region and riding roughshod over the people's demand for sovereignty and self-determination?

To many Kashmiris, their eviscerated autonomy was only symbolic of their identity rather than being a matter of administrative power. Many regarded the pact of autonomy like a marriage contract, an arrangement with India; once it was removed, the marriage ended as well and the *de facto* occupation became *de jure*.

As far as others are concerned, however, Kashmir's special status was the only force, which protected the indigenous people's right to their land and resources. The removal of Kashmir's autonomy through military power and New Delhi's political machinations send a signal that India is determined to expand its control and promote Hindutva through settler colonialism. The purpose of the straw man fallacies is simply to keep the charade of democracy intact.

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